

Thursday, 18 April 2024]

No 52 - 2024] SIXTH SESSION, SIXTH PARLIAMENT

# PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

## ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

THURSDAY, 18 APRIL 2024

### ANNOUNCEMENTS

The Speaker:

#### 1. Appointment of Party Members

Ms. A Cassiem has been appointed as Party Leader for Economic Freedom Fighters and Mr. G W Kasibe has been appointed as a Whip for Economic Freedom Fighters (EFF) in the Western Cape Provincial Parliament with effect from 16 April 2024.

#### 2. Change in membership of committees with effect from 18 April 2024 (\* denotes a change):

##### 1. Standing Committee on Mobility\*

*Members: 5*

DA (3)	ANC (1)	GOOD (1)
Van der Westhuizen, A P Sileku I Maseko, L M *	Mvimbi, L L	Little, S A
<b>Alternate Members</b> Murray, C	<b>Alternate Members</b> Nkondlo, N D Dugmore, C M	

##### 2. Standing Committee on Agriculture, Environmental Affairs and Development Planning (Agriculture, Environmental Affairs and Development Planning)\*

*Members: 6*

DA (3)	ANC (1)	GOOD (1)	FF PLUS (1)

Van der Westhuizen, A P (C) Sileku, I* Murray, C <b>Alternate Members</b> Maseko, L M	Marran, P  <b>Alternate Members</b> Smith, D Lili, A	Little, S A	Marais, P J
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### 3. Budget Committee\*

*Members: 5*

DA (3)	ANC (1)	AL JAMA-AH (1)
Baartman, D M (C) Murray, C A T Van de Westhuizen, A P*  <b>Alternate Members</b> Fry, C Poole, C J* Bosman, G Maseko, L M Pretorius, G Sileku, I M	Mvimbi, L L  <b>Alternate Members</b> Nkondlo, N D Smith, D	Brinkhuis, K

## COMMITTEE REPORT

***(Negotiating mandate stage) Report of the Standing Committee on Education on the Basic Education Laws Amendment Bill [B2B-2022], dated 15 April 2024, as follows:***

The Standing Committee on Education having considered the subject of the Basic Education Laws Amendment Bill [B2B-2022] referred to it in terms of Standing Rule 217, confers on the Western Cape’s delegation in the NCOP the authority to not support the Bill.

In accordance with Standing Rule 90, the African National Congress expressed its Minority View to support the Bill.

*The Western Cape Provincial Parliament Standing Committee on Education herewith formally recommends the following in respect of the Basic Education Laws Amendment Bill [B2B-2022].*

### 1. Clause 1

**The Standing Committee supports the Clauses with the following amendments:**

This Clause provides for the insertion of new definitions and seeks to amend certain existing definitions.

The Committee recommends additional inclusions such as online schooling, cottage schools, meetings and special needs education should be regulated.

The Committee recommends an inclusion of the following definition of “bullying”, as per the Centre for Gender Equality (CGE) submission received:

**“Bullying”:** Bullying refers to any form of conduct, whether written, verbal, or physical, including electronic communication, that meets the criteria of being severe, persistent, or pervasive enough to hinder a student's participation in or benefits from a public school or local educational agency's program or activity. It also encompasses conduct that creates a hostile or abusive educational environment, thereby negatively impacting a student's education. Examples of bullying include acts of verbal, nonverbal, or physical aggression, as well as intimidation aimed at a student.”

The Committee recommends an inclusion of the following definitions, as per the FW De Klerk submission received:

- The Department should include definition for “Equality”;
- The Department should include definition for “Equity”; and
- The Department to review definition of “required documents” considering the Phakamisa judgement<sup>1</sup> and existing requirements set in SASA to ensure documents (1) serve a legitimate purpose with regards to school administration or admission, and (2) are readily accessible and available via the Department of Home Affairs.

## 2. Clause 2

**The Standing Committee opposes the Clauses with the following amendments:**

The Committee supports the intention of making Grade R mandatory but raise concerns about the financial costs and practicality of this decision. While it is commendable that the Department of Basic Education wishes to extend Grade R to all learners, there are serious practical concerns surrounding whether the schooling system will be able to cope with the new demand. Existing schools do not currently have capacity to take in this number of additional learners at a Grade R level. There will also need to be significant expansion of Grade R classroom capacity and employment of additional teaching staff across the country.

Questions to be asked to the Department of Basic Education:

- Whether or not schools have adequate facilities for the implementation of these provisions and if not; the length of time required to build capacity in these schools?
- What recourse measures will be available to parents who choose not to send their children to grade R?

The Committee supports the principle behind this Clause related to Gr R, but the cost of implementing this provision on our fiscus is simply too high.

Further, the Committee supports the argument made by the FW De Klerk Foundation that,

“the Bill discriminates against undocumented learners through the inclusion of the definition of “required documents”. This goes against the court’s ruling in the Phakamisa judgement that confirmed that undocumented learners must not be denied access to basic education because of their status. Provision should be made for undocumented learners.

By criminalising parents for non-compliance with compulsory attendance, the amendment may infringe on the constitutional rights of parents and learners, particularly regarding

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<sup>1</sup> *Centre of Child Law and Others v. Minister of Basic Education and Others* 2020 (3) SA 141 (ECG) (12 December 2019) (“*Phakamisa*”) where it was confirmed that undocumented learners must not be denied access to basic education because of their status.

freedom of arbitrary arrest or detention and the right to education. The punitive measures, including fines and imprisonment, disproportionately impact vulnerable families facing socio-economic challenges, potentially violating the right to equality and the right to human dignity. This raises significant constitutional concerns about the appropriateness of criminal sanctions for addressing attendance issue.”

**In the alternative:**

- The committee recommends that the deletion of “12 months” in sub-Clauses 2(b) (amending Section 6(a) and (b) of SASA) and that the status quo of SASA remains in this regard.
- The committee supports sub-Clause 2(c), amending Section 7 of SASA, regarding the disruption of education.  
The Committee further requests consideration by the Department that Early Childhood Development (ECD) to be regulated.

The Committee further would like to include the financial calculations as presented on the costings and funding of the Bill and the inclusion of the following presentations (Attached annexures):

- The Finance and Fiscal Commission (FFC)
- The Department of Basic Education (DBE)
- National Treasury (NT)

3. **Clause 3**

The Standing Committee supports this Clause.

4. **Clause 4**

The Standing Committee opposes this Clause and request that this Clause be withdrawn/struck in its entirety; and in the alternative, recommends amendment.

**Recommendation:**

Oppose and Clause withdrawn/struck in its entirety.

**In the alternative, recommends following amendments:**

Clause 4(d) to be withdrawn;

Clause 4(e) to be withdrawn; and

Clause 4(g) to be amended to include if schools fail or refuse to provide the MEC with requested documentation within 7 (seven) working days that an appeal may be decided on available evidence.

And further, in the alternative, recommends following amendment:

Clause 4(d), amending Section(5)(5)(d) of (SASA), should read “... the HOD in consultation with the SGB...”

5. **Clause 5**

The Standing Committee opposes this Clause and request that this Clause be withdrawn/struck in its entirety; and in the alternative, recommends amendment.

**Recommendation:**

Oppose and Clause withdrawn/struck in its entirety.

**In the alternative, recommends:**

- Concept of “community” is too vague and should be clarified.
- Amend Clause 5(a), amending section 6(2) of SASA to read,

“(2) The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law. Provided that the language policy of a public school must be limited to one or more of the official languages of the Republic as provided in section 6(1) of the Constitution.”

- The inclusion of an Appeals Clause, reading:  
“Section 6(4) If a parent of a learner is not satisfied with the language policy of a school governing body, based on the Constitution, this Act and any applicable law, they may appeal against the decision to the HoD and/or Member of the Executive Council. “

**6. Clause 6**

The Standing Committee supports this Clause.

**7. Clause 7**

The Standing Committee opposes the Clause with following amendment. If the Committees amendment is not accepted, the Committee would oppose the Clause:

The term ‘just cause’ is too wide and can lead to frivolous applications for exemption. Therefore ‘just cause’ should be replaced by ‘religious, cultural, or medical grounds’ in order for the proposed amendment to serve its intended purpose.

**8. Clause 8**

The Standing Committee opposes this Clause with the following amendment.

Retain wording “illegal drug” in proposed Clause 8, amending section 8A of SASA, and requests inclusion of definition of “illegal drug” as “any drug defined in the Drugs and Drugs Trafficking Act, 1992 (Act 140 of 1992) that is used in contravention of section 4 of that Act.”

**9. Clause 9**

The Standing Committee support this Clause subject to following amendments.

In cases of serious misconduct involving physical of sexual violence, the learner is suspended pending an investigation (or being heard). In a situation like this a time limit should be placed on the student’s right to be heard, or an opportunity to provide reasons for why the suspension should not be implemented, e.g. they must be heard within a week.

To do this, the Act would further need to have differentiated Clauses and or definitions for different types of “misconduct”, and in particular for “serious misconduct”.

**10. Clause 10**

The Standing Committee supports this Clause.

**11. Clause 11**

The Standing Committee supports this Clause.

12. **Clause 12**

The Standing Committee supports this Clause with following amendment:

The Committee recommends an inclusion as per the submission by the SA National Council for Blind, that Clause 12, amending Section 12 of the SASA, be amended so that an application of a public school being designated as a public school with a specialized focus on talent be expanded to include a specialised disability for learners with special education needs.

13. **Clause 13**

The Standing Committee support this Clause with following amendment:

The Committee recommends an inclusion as per the submission by the SA National Council for Blind, that Clause 13, amending section 12A of SASA be amending to include factors relating to instances where two or more schools are merged should include LSEN and Specialist schools mergers.

14. **Clause 14**

The Standing Committee support this Clause with the following comments:

**Comments:**

- Committee is satisfied that “in consultation” is legally sufficient for the provision.
- Schools must as part of the central procurement provision have an option to opt-in to the system, and not for it to be an opt-out system. Schools must not be trapped in an opt-out system.

15. **Clause 15**

The Standing Committee supports this Clause with the following amendment:

The proposed amendment creates greater clarity regarding the powers of the HOD to withdraw functions of SGBs and indicates the processes that need to be followed when functions are withdrawn.

The Clause may be considered necessary to ensure functional SGBs. The authority exists in current SASA, but this expands on this power in greater detail.

It is recommended that there needs to be an investigation into the need for expanding the authority to ‘one or more’ functions instead of a single ‘function’.

16. **Clause 16**

The Standing Committee supports this Clause with the following amendments:

**Inclusion of proposed amendments, as per WCED submission:**

- The definition of “community” to be inserted or alternatively the term be deleted; and
- Further, provisions to be drafted by the Department applying “to any person with the relevant expertise”.

17. **Clause 17**

The Standing Committee opposes this Clause.

The transferal of this power from the MEC to the Minister amounts to a greater centralisation of power and is thus opposed. This could constitute an unjustified intrusion into the provincial sphere.

The Committee recommend that this Clause should be deleted.

**18. Clause 18**

The Standing Committee supports this Clause.

**19. Clause 19**

The Standing Committee supports with this following amendment:

The 14-day appeal procedure against a HOD's decision is unrealistic and should be extended to 30 days.

**20. Clause 20**

The Standing Committee supports with the following amendment:

As per the WCED submission, the Committee recommends:

- That an additional provision to be added to the proposed amendment to provide for monitoring of compliance with this provision by Districts.

Further, the Committee recommends –

- Amendment to Clause 20, amending section 26(1) of the SASA, removes the words “personal and financial”;
- Amendment to Clause 20, amending Section 26(3) of SASA, to remove the word “personal”; and
- Amendment to Clause 20, amending Section 26(4) of SASA, to remove the word “personal”.

**21. Clause 21**

The Standing Committee supports this Clause.

**22. Clause 22**

The Standing Committee opposes this Clause and recommends that it be deleted.

It encroaches on the legislative powers of provinces;

It is better provided for by regulations made by the relevant MEC; and

Thus the proposed amendment should be deleted.

**23. Clause 23**

The Standing Committee support this Clause with the following amendment.

The Committee proposes that additional amendment is included to provide that a principal may not be a member of a disciplinary committee.

**24. Clause 24**

The Standing Committee supports this Clause.

**25. Clause 25**

The Standing Committee supports the Clause with the following amendment:

The Committee recommends an inclusion as per the SA National Council for Blind's submission that Clause 25, amending Section 33 of SASA relating to the closure of public schools with reduced registered learners, be amended to include consideration of Learners with special education needs who require smaller classroom sizes of between 10 to maximum 20 learners per class.

**26. Clause 26**

The Standing Committee supports this Clause with the following amendment:

The Committee proposes that "Member of the Executive Council" (MEC) in Clause 26(a) to be substitute with the "Head of Department" (HOD).

**27. Clause 27**

The Standing Committee supports this Clause as it is a technical correction.

**28. Clause 28**

The Standing Committee supports this Clause.

**29. Clause 29**

The Standing Committee supports this Clause.

**30. Clause 30**

The Standing Committee supports this Clause.

**31. Clause 31**

The Standing Committee supports this Clause.

**32. Clause 32**

The Standing Committee supports this Clause.

**33. Clause 33**

The Standing Committee supports this Clause.

**34. Clause 34**

The Standing Committee supports this Clause with the following amendment:

It is recommended that there are tighter constraints or guidelines on what may constitute a valid 'condition'. This should be done to establish greater legislative certainty.



It is further recommended that the Department include the conditions related to how the subsidy is spent, the purpose for which the subsidy is spent, reporting on outcomes of the subsidy expenditure and related types of conditions.

**35. Clause 35**

The Standing Committee opposes this Clause with the following amendment.

**Recommendation:**

The Committee recommends that the Clause be struck/withdrawn in its entirety.

**In the alternative, the Committee recommends:**

The Committee proposes that further consultation with the home-schooling sector needs to be done to determine their views on this Clause.

Home Schooling parents, practitioners, and learners have objected to this Clause for a variety of reasons. Extensive calls for proper consultation and research to be conducted prior to the approval of this Clause have been called for.

Concerns have been raised that the amendment, amending Section 51(16) of SASA, may give the Minister almost unlimited power to regulate home education.

And therefore recommends, in the alternative:

- Inclusion of “(iv) the proposed home education programme will maintain standards that are not inferior to standards at comparable public educational institutional; and ...”\_after section 51(2)(a)(iii);
  - Insertion of new subsection (4) and (5) with the (proposed new subsections which follow to be renumbered accordingly), as follows:
- (4) The Head of Department may not conduct a pre-registration home education site visit contemplated in subsection (3), before-
- (a) informing the parent, in writing, of his or her intention so to act and the reasons therefor;
  - (b) granting the parent a reasonable opportunity to make representations to him or her, which opportunity must include discussions relating to such intention;
  - (c) Giving due consideration to any such representations received; and
  - (d) providing the parent with written reasons for his or her decision.
- (5) In conducting a pre-registration home education site visit contemplated in subsection (3), the Head of Department must ensure that the collection and processing of personal information to verify the information supplied in the application documentation to provide support, where necessary, is subject to the Protection of Personal Information Act (Act 4 of 2013)

**36. Clause 36**

The Standing Committee support this Clause with the following amendment:

That the Department includes in Clause 36(b), amending Section 59(2) of SASA, “... Member of Executive Council, ...”\_before “Head of Department” in the Clause in order to allow a MEC to also be empowered to call for information from schools.

**37. Clause 37**

The Standing Committee supports this Clause.

**38. Clause 38**

The Standing Committee opposes this Clause with the following amendment.

This section deals with the liability of the State for any delict, or contractual damages caused as a result of any school activity conducted by a public school for which the public school would have been liable. The proposed amendment to section 60 excludes the liability of the State if the provisions of section 36(2) of the SASA have not been complied with.

**It is recommended:**

- That subClause (1)(b) be substituted with the following subClause:  
“(b) Where a public school has taken out insurance and the school activity is an eventuality covered by the insurance policy,-  
(i) the liability of the State is limited to the extent that the damage or loss has not been compensated in terms of the policy, and  
(ii) if such damage or loss has not been compensated, the State shall be entitled, as against the school, to be indemnified or to the payment of a contribution to the extent that, and in the amount in which, the school is covered for such damage or loss in terms of such policy.”

**39. Clause 39**

The Standing Committee opposes this Clause and it should be struck/withdrawn in its entirety.

The committee opposes this Clause as it is too vague and would give blanket regulation power to the Minister.

This Clause further cannot be not supported as it potentially encroach upon powers of provinces and it is more appropriately determined at provincial level.

**40. Clause 40**

The Standing Committee supports this Clause.

**41. Clause 41**

The Standing Committee supports this Clause.

**42. Clause 42)**

The Standing Committee supports this Clause.

**43. Clause 43**

The Standing Committee supports this Clause.

**44. Clause 44**

The Standing Committee supports this Clause.

**45. Clause 45**

The Standing Committee opposes this Clause and requests clarity as to why this Clause is required in the first place. It is recommended that the Clause is struck/withdrawn in its entirety.

**46. Clause 46**

The Standing Committee supports this Clause.

**47. Clause 47**

The Standing Committee supports this Clause.

**48. Clause 48**

The Standing Committee supports this Clause.

**49. Clause 49**

The Standing Committee opposes this Clause with the following amendment.

The Committee recommends that –

- the prohibition be confined to state employees, namely departmental posts as opposed to SGB posts; and
- that provisions be made for educators who are state employees to submit an application to be exempt subject to necessary and appropriate safeguards.

The Department must regulate departmental appointments and SGBs must regulate its own SGB appointments.

**50. Clause 50**

The Standing Committee opposes this Clause:

The Clause potentially encroaches on powers of provinces; and it is more appropriately determined at provincial level.

**51. Clause 51**

The Standing Committee supports this Clause.

**52. Clause 52**

The Standing Committee supports this Clause.

**53. Clause 53**

The Standing Committee supports this Clause.

**54. Clause 54**

The Standing Committee supports this Clause.

**Additional Comments:**

The Committee would like to recommend the following matters to the NCOP Select Committee and the Department of Basic Education to consider:

### **1.1. Effective Regulation of Online and Blended Learning**

The Committee believes the Basic Education Laws Amendment Bill is missing an opportunity to *effectively regulate* online and blended learning. These forms of schooling are likely to grow in popularity in the near future. There is a need to effectively regulate these new forms of learning so as to alleviate the pressure on existing physical schooling systems.

It is recommended that the Bill includes effective regulation of online and blended learning in the bill.

### **1.2. Sexual Abuse in Schools**

The Committee believes that the BELA Bill fails to provide enough protection for learners that have to attend disciplinary hearings in the case of sexual abuse cases, where learners are often victims of adult sexual abuse.

It is recommended that the Bill provides for protection of learners that have to attend disciplinary hearings in the case of sexual abuse cases, where learners are often victims of adult sexual abuse.

### **1.3. Systemic Issues**

The Committee believes that the BELA Bill ignores the real issues in schools nationally. It has no Clause or regulations that will solve the following national problems:

- Dropouts;
- Lack of resources regarding teachers, classrooms, schools, libraries, laboratories, ICT infrastructure and more;
- Safe infrastructure (schools with pit toilets, mud classrooms, dilapidated, buildings, asbestos roofs, no water); and
- Poor quality teaching where some teachers are not qualified to teach their subjects.

The Committee recommend that these issues be addressed in the Bill.

### **1.4. Submission: SA National Council for Blind**

As per the submission received from the SA National Council for the Blind, there is no provision in the Bill for Learners with Special Needs with regard to the following, and the Committee therefore recommends provisions for:

- Textbooks and Education literature in Accessible Formats (audio ‘talking books’ and braille) especially for blind and visually impaired learners including teaching support materials for visually impaired educators;
- Provision of monitors during exams and extension of duration to complete the papers;
- Provision of assistive devices per learner and the ability for learners to continue use of such devices, where appropriate at their homes and in hostels to aid homework and school holiday projects;
- Orientation and Mobility (O& M) Training;
- Provision for Second Chance Matric opportunities for students with disabilities;
- Provision for Transportation of learners with special needs in liaison with Department of Transport. Especially relevant for learners in rural areas attending boarding schools; and
- Provision of Blended and online learning to utilize Digital Sound Broadcasting (DSB) mechanisms including digital radio where broadcasting of lessons (text and images) is broadcast free of data costs.

It is recommended that these issues be addressed in the Bill.

## **1.5. Financial Considerations (Please find attached the SEIAS, FFC Presentation, DBE Presentation and NT Presentation):**

### **1.5.1 FFC Presentation: 20 March 2024 (See attached Annexure)**

The Basic Education Law Amendment (BELA) Bill will cost an additional R17.7 billion in new funding at the very least. This was the key message of the Finance and Fiscal Commission (FFC), which briefed the Western Cape Standing Committee on Education on 20 March 2024.

The FFC found that there were “significant gaps” in the DBE’s costing for the Bill, calling the Department’s estimates “naïve”. These concerns particularly relate to BELA’s introduction of compulsory Grade R. According to the Constitutionally independent commission, the Department’s costing does not account for several of the additional infrastructure additions which would have to be made to schools if BELA were to pass, such as additional ablution facilities, security, and teacher resources; nor does it account for cost-of-living adjustments or wage increases for the additional staff BELA would require. Even without these inclusions, infrastructure will cost R12.4 billion at the very least; while staffing costs will draw an additional R2.6 billion at least from the taxpayer – per year.

The FFC further confirmed that the DBE’s estimates make no allowance for additional administration, transport or special needs education support costs. They indicated that their estimate of R17.7 billion remained conservative, and expressed concern over whether or not government possessed “the necessary financial resources” required to implement the Bill.

These developments followed subsequent to a letter by National Treasury in which BELA was referred to as an “unfunded mandate” under Section 35 of the Public Finance Management Act. Contradicting the DBE in previous WCPP Committee meetings, National Treasury stated that it is the DBE which bears responsibility for coming up with funding for the Bill, and that National Treasury could not even begin to address the issue of cost.

As the FFC noted during their presentation, accurate and comprehensive costing of proposed Bills is a requirement in law under Chapter 10, 195(1)(b) of the Constitution.

This matter raises concerns whether or not lack of funding as well as lack of adequate costing of the Bill renders it unconstitutional.

### **1.5.2 DBE Presentation: 22 March 2024 (See attached Annexure)**

At the WCPP Standing Committee on Education briefing on 22 March 2024 on the costing and funding of the controversial Basic Education Law Amendment (BELA) Bill, the national Department of Basic Education (DBE) admitted that their costing of the Bill is off by several billion Rand, and that the Department had no clear answer on how much the Bill would cost. In addition to this, the Department was unable to sufficiently answer the question of where funding for the Bill will come from, or even if any funds are available for the Bill.

The DBE’s representative, Mr. Ndlebe, confirmed that the Bill’s costing does not account for several costs which will be incurred should BELA become law. These costs, which the Department has not yet considered, and which are not included in the Bill’s memorandum, include:

- Increased learner-teacher support materials (LTSM);
- Increased learner transport;
- Additional nutrition;
- Special Education Needs Education, including assistive devices; and
- Increased administrative costs.

This means the Socio-Economic Impact Assessment (SEIAS) Report on the Bill is fundamentally flawed.

The DBE's representative stated that the total cost of BELA would stand at an estimated R15 billion. However, when members of the committee raised the fact that the Financial and Fiscal Commission had this week stated that the Bill would cost at least R17.7 billion to implement, Departmental officials admitted that costs would have to be reconsidered. This is further in contrast to the Bill's current memorandum estimating financial implications for the state to the value of R17.26 billion, excluding provisions for Home Education Assessment costs.

Departmental officials also admitted that the costing had been done on the implementation of compulsory Grade R relies on an estimate of one educator for every 40 Grade R students. As was noted in the meeting, this amount would violate the minimum norm of one educator for every 35 learners, and is far off the current average of one educator for every 29 learners. Furthermore, DBE representatives confusingly claimed that there would be no costing for new provisions surrounding homeschooling in the Bill – contradicting the financial implications to the state in the Bill's memorandum.

It was found that the DBE could not adequately answer how much the Bill would cost, it was also unable to answer the question of where funding for the Bill would come from. The Department previously referred the committee to National Treasury, who responded with a letter referring to the Bill as an "unfunded mandate", and stating clearly that the Department of Basic Education bore responsibility for the Bill's costing.

With this in mind, the committee took a unanimous resolution to request Minister Enoch Godongwana to give a firm and final answer on the costing and funding of the Bill.

### **1.5.3 National Treasury Presentation: 11 April 2024 (See attached Annexure)**

As per the National Treasury presentation to the WCPP Committee, there is currently no plan to fund the implementation of the Basic Education Law Amendment (BELA) Bill. Should the bill pass into law, based on the Bill's current calculations, each of South Africa's nine provinces will be required to find an additional and unplanned minimum amount of R2 billion per annum to fund its implementation (R17.7 billion divided by 9 provinces, on an 'equal' calculation assumption).

During their presentation, National Treasury's representatives confirmed that no allocation to fund the implementation of BELA has been made within the next three financial years and that National Treasury has not committed to funding the Bill. This contradicts previous statements made by the Department of Basic Education to the committee, in which DBE stated that National Treasury had committed to funding the Bill. When questioned on this, DBE representatives in the meeting admitted that the Bill was "not fully funded", and that provinces would be left to find the estimated additional R2 billion per annum for costs related to BELA implementation – including the multi-billion Rand expense associated with mandatory Grade R implementation. While DBE claimed that Grade R is funded to 70% across South Africa, neither the DBE nor National Treasury were able to provide an answer as to where the additional 30% of funding might come

from. Instead, DBE suggested that provinces would have to look towards their current provincial equitable share funding to fund this.

During previous committee briefings, the Financial and Fiscal Commission (FFC) stated that BELA's cost was likely to be much higher than the DBE's claimed figure, with the Bill predicted to cost at least R17.7 billion when estimated conservatively. This does not include uncoded matters such as increases in nutrition and transport programmes.

When given an opportunity to comment, representatives of the Western Cape's Provincial Treasury confirmed that the Western Cape will not be able to carry the additional financial burden. Representatives of the Western Cape Education Department also confirmed that their Department sees no way of implementing BELA without sacrificing other initiatives. The Western Cape is already in the process of an intergovernmental dispute with national government over a R1.7 billion funding shortfall related to the ANC government's unilateral decision to unsustainably hike public wages.

Nevertheless, the DBE and National Treasury downplayed concerns from committee members regarding the financial implications of the Bill, and stated that "no bill is ever fully funded".

#### **1.5.4 Recommendation re Financial Implications of the Bill**

The Committee holds that the Bill is substantively not properly costed; no funding commitment has been made for its implementation; and there is currently no allocated budget for the intended implications of the Bill. It would be irresponsible and irrational for the Committee to agree to the Bill, considering the impact the financial strain would have on the provincial fiscus; and

Therefore, the Committee recommends that the Bill be withdrawn.

#### **1.6. The public participation process of the Bill by the Standing Committee is as follows:**

After resolving to conducting 12 (twelve) public hearings, the Committee resolved to accommodate the NCOP timeline and resolved to conduct 7 (seven) public hearings instead in each of the following areas:

- (Monday) 26 February 2024 in Beaufort West;
- (Tuesday) 27 February 2024 in Bitou (Plettenberg Bay);
- (Wednesday) 28 February 2024 in George;
- (Thursday) 29 February 2024 in Mossel Bay;
- (Friday) 15 March 2024 in Paarl;
- (Friday) 22 March 2024 in Saldanha Bay; and
- (Thursday) 04 April 2024 in the CBD Chamber (two public hearings were held).

Public hearing dates had to be cognisant of members potentially sitting in multiple committees and possible across clusters within the WCPP; as well as a multitude of legislation before the WCPP at the time, as received from the NCOP.

Advertisements was placed in three province wide newspapers as well as in each local newspaper of the town the respective public hearing will be in.

Utilising a 'WhatsApp' number so that members of the public can send their input on the Basic Education Laws Amendment Bill [B2B-2022], (NCOP) directly to the Committee for consideration as written and / or oral submissions.

The Committee made use a media campaign utilising social media (Twitter, Facebook paid advertising, voice notes via Whatsapp, online questionnaires, radio station broadcasts per region, posters, and flyers).

The Parliamentary Monitoring Group assisted with advertising the Basic Education Laws Amendment Bill [B2B-2022], (NCOP) on their website.

An online submissions template/questionnaire was created.

The WCPP Public Education and Outreach Section to assist with the public education and pre-hearing workshops and provide feedback to the Committee, awareness sessions with persons on its database through SMS notifications, Community Development Workers to assist with awareness programmes on the Bill, promotion of the Clauses of the Basic Education Laws Amendment Bill [B2B-2022], (NCOP), in particular its nature, scope and possible impact on the province, through municipal Integrated Development Plan meetings with municipalities.

Transportation for members of the public to attend the public hearings of the Basic Education Laws Amendment Bill [B2B-2022], (NCOP).

As at deadline of the public participation deadline of 04 April 2024, the Committee had 2997 persons in total attending its public hearings and had received 5445 submissions:

- 3345 written submissions;
- 1670 online submissions; and
- 430 whatsapp submissions.

Further, the Committee attaches all correspondence to the NCOP on this Bill, including requests for extension to the public participation deadline in order to ensure that the Western Cape ensures meaningful public participation in its processes.

## **Conclusion**

**The Committee opposes the Bill and recommends it be withdrawn.**